SECTION II
REMARKS

Regarding the Amendments

Claims 1, 4, 6, 7, 30, 32, 34, 35, 37, 47, and 54 have been amended as set forth in the above Complete Listing of the Claims. As amended, the claims are supported by the specification and the original claims.

Specifically, the amendment to claim 1 is supported by previously pending claims 3 and 5, now cancelled. The amendments to claims 30, 47 and 54 are supported by previously pending claims 31 and 33, now cancelled. Claims 4, 6, 7, 32, 34, 35, and 37 have been amended to remove any dependency upon now cancelled claims.

No new matter has been added, as defined by 35 U.S.C. § 132.

By the present amendment, cancellation of claims 3, 5, 31 and 33 is requested, without prejudice.

Thus, upon entry of the amendments, claims 1, 2, 4, 6, 7, 9, 30, 32, 34, 35, 37-42, 47-55, 57, and 58 will be pending and under examination.

Rejection of Claims Under 35 U.S.C. §103

In the Office Action mailed October 15, 2008, the examiner rejected claims 1-7, 9, 30-35, 37-42, 47-55, 57 and 58 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Publication No. 2004/0059205 (hereinafter "Carlson et al.") in view of U.S. Patent No. 5,365,217 (hereinafter "Toner et al.") and further in view of U.S. Patent Publication No. 2004/0073093 (hereinafter "Hatlestad et al.").

It is elemental law that in order for an invention to be obvious, the difference between the subject matter of the application and the prior art must be such that the subject matter as a whole would have been obvious at the time the invention was made to a person of ordinary skill in the art. In order to meet this standard for a proper §103 rejection, all claim limitations must be disclosed or derivable from the cited combination of references, there must be a logical reason to combine the cited references to produce an operable combination and there must be a reasonable expectation of success. (MPEP §2143)

Carlson et al. in view of Toner et al. and further in view of Hatlestad et al. fail to provide any

derivative basis for the claimed invention and, additionally, there would have been no logical reason for one of skill in the art to combine such references. Accordingly, no basis of *prima facie* obviousness of the claimed invention is presented by such cited references.

Presently pending in the application are independent claims 1, 30, 47 and 54. The remaining claims depend from these claims, either directly or indirectly and therefore contain all limitations of the independent claims from which they depend.

All of independent claims 1, 30, 47 and 54 recite the features of "comparing the physiological parameter reading with a first predetermined physiological parameter threshold value to determine if the person is wearing the device properly" and "comparing the physiological parameter reading with a second predetermined physiological parameter threshold value to determine if the person has a physical condition." It is respectfully submitted that the cited combination of references does not provide a method or system comprising such features.

Carlson et al. describe a system comprising the following elements: a sensor (3/3') "for the acquisition of medically relevant data…," "…if necessary, an evaluation unit [(22)]…in order to determine whether or not the measured values are within or outside a defined normal range," and "a sending and receiving device [(5)] for voice and/or data…" (Carlson et al., para. [0005]-[0010]). However, it is repeatedly stated by Carlson et al. that the transmission of data is performed when a discrepancy is noted between a predefined normal range and the detected range "[i]n the event a relative discrepancy is detected…" (para. [0019]); "[i]f measured values or curve shapes of the EKG outside of the normal range are detected, the evaluation system…outputs a command to a data sending and receiving device for voice and/or data…" (para. [0014]); "[i]f irregularities are detected in the analysis…" (para. [0076]); "in the event of discrepancies from a predetermined measuring range…" (para. [0081]); "[i]n the event said measured data deviate from the predetermined defined range, the mobile telecommunication apparatus 5 automatically dials a receiver…" (para. [0089]). Once such discrepancy has been noted, the data is transmitted to the mobile telecommunications unit 5, which automatically dials the receiver 9 and the receiver 9 can identify the position of the patient by means of a Global Positioning System (GPS).

Carlson et al. do not mention associating the discrepancies with a particular condition other than a deviation from a normal range. Carlson et al. do not provide a system where information communicated between the telecommunication unit 5 and the receiver 9 provide information

such as whether the person is wearing the device correctly or if the person has a physical condition. Accordingly, Carlson et al. do not provide a method or system with the elements of "comparing the physiological parameter reading with a first predetermined physiological parameter threshold value to determine if the person is wearing the device properly" or "comparing the physiological parameter reading with a second predetermined physiological parameter threshold value to determine if the person has a physical condition." Additionally, the examiner alleged that Carlson et al. "fails to disclose locating the person via access stations within an area, thereby dividing the area into cells…" (Office Action mailed August 15, 2008, p. 3.) It is respectfully submitted that viewing the Carlson et al. reference in view of further cited references Toner et al. and Hatlestad et al. does not remedy the above deficiencies.

Toner et al. is cited by the examiner as providing a central monitoring station, which could be substituted for the GPS tracking system of Carlson et al. Toner et al. discloses a system for monitoring safety of persons within a predetermined area. The system includes a portable personal distress signal transmitter 10, the transmitter 10 including "a manual actuator button or switch 16 which the person having transmitter 10 in his or her custody can actuate upon coming in apprehension of his personal safety." (Toner et al., col. 4, ll. 40-43.) The system further includes a plurality of distress signal detector stations 20 that provide location information and relay alerts to a central monitoring station 28. (Toner et al., col. 5, l. 52 to col. 6., l. 24.)

The plurality of distress signal detector stations 20 are positioned in a regular pattern and corresponds to the predetermined area. Upon receipt of a personal distress signal, the central monitoring station 28 identifies which distress signal detector station 20 detects the distress signal and a coresponding relay signal is transmitted thereto. Once the detector station 20 is identified, a display is provided on a display monitor and security personnel watching the display monitor can dispatch appropriate assistance to the individual who transmits the distress signal.

Carlson et al. in view of Toner et al. therefore still do not provide a system or method with the elements of "comparing the physiological parameter reading with a first predetermined physiological parameter threshold value to determine if the person is wearing the device properly" or "comparing the physiological parameter reading with a second predetermined physiological parameter threshold value to determine if the person has a physical condition," as are recited in independent claims 1, 30, 47 and 54.

Toner et al. do not provide a range of values of a physiological parameter which the user would

be concerned with in deciding whether to activate the switch 16 on the transmitter 10. Additionally, in Toner et al. there is no mention of associating each deviation from the range of values with a specific condition, for example if the person is wearing the device properly or if the person has a physical condition, as are recited in independent claims 1, 30, 47 and 54 of the present application. Furthermore one of skill in the art would not be motivated to combine the systems of Carlson et al. and Toner et al. to achieve the claimed system or method, as the system of Toner et al. includes a signal sent upon manual activation by a user and the system of Carlson et al. is automatically sends a signal upon evaluation of a discrepancy in monitored values.

The examiner has additionally cited Hatlestad et al. as stating "that applying correction factors to compensate for the context in which physiological data is measured increases the reliability of the measured data and improves assessments of the patient's health…" (Office Action mailed August 15, 2008, p. 4.) The correction factors described in Hatlestad et al. provide that the "measurement device 102 may employ algorithms to normalize or correct the measurements to correspond to those taken during a baseline context different from the present patient context. This may be done by applying correction factors associated with the present patient context (*e.g.* multiply pulse rate by a factor of 1.3 when the pulse rate is recorded while the patient is lying down to approximate upright and awake pulse rate)." (Hatlestad et al., para. [0027]) In this regard, Hatleastad discloses a respective value associated with a certain position of a patient. Once such values have been obtained, Hatlestad et al. provide a compensation process involving application of a correction factor when there is a change in position of a patient.

However, Carlson et al. in view of Toner et al. and further in view of Hatlestad et al. do not provide a system or method with the elements of "comparing the physiological parameter reading with a first predetermined physiological parameter threshold value to determine if the person is wearing the device properly" or "comparing the physiological parameter reading with a second predetermined physiological parameter threshold value to determine if the person has a physical condition," as are recited in independent claims 1, 30, 47 and 54.

It is understood that "[o]ne cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)." (MPEP §2145) The above discussions of each reference are not meant to attack each reference individually, but are intended to show the deficiencies in the combination of references, since each reference in the combination is required to be considered as a whole.

As described above, the independent claims are non-obvious in view of cited reference Carlson et al. in view of Toner et al. and further in view of Hatlestad et al. Therefore, the dependent claims, which depend directly or indirectly from claims 1, 30, 47 or 54 and contain all limitations of the independent claims by virtue of their dependency, are also non-obvious in view of cited reference Carlson et al. in view of Toner et al. and further in view of Hatlestad et al.

As Carlson et al. in view of Toner et al. and further in view of Hatlestad et al. does not provide any logical basis for the system or method recited in claims 1-7, 9, 30-35, 37-42, 47-55, 57 and 58, Carlson et al. in view of Toner et al. and further in view of Hatlestad et al. does not render the claimed invention obvious. Accordingly, withdrawal of the rejection of claims 1-7, 9, 30-35, 37-42, 47-55, 57 and 58 under 35 U.S.C. § 103 (a) as being obvious over Carlson et al. in view of Toner et al. and further in view of Hatlestad et al. is respectfully requested.

CONCLUSION

All of Applicants' pending claims 1, 2, 4, 6, 7, 9, 30, 32, 34, 35, 37-42, 47-55, 57, and 58 are patentably distinguished over the art, and in form and condition for allowance. The Examiner is requested to favorably consider the foregoing and to responsively issue a Notice of Allowance.

The time for responding to the August 15, 2008 Office Action without extension was set at three months, or November 15, 2008. This Response is therefore timely and no fees are believed to be due for the filing of this paper. However, should any fees be required or an overpayment of fees made, please debit or credit our Deposit Account No. 08-3284, as necessary.

If any issues require further resolution, the Examiner is requested to contact the undersigned attorneys at (919) 419-9350 to discuss same.

Respectfully submitted,

Date: November 14, 2008

/steven j. hultquist/
Steven J. Hultquist
Reg. No. 28,021
Attorney for Applicants

Date: November 14, 2008

/kelly k. reynolds/
Kelly K. Reynolds
Reg. No. 51,154
Attorney for Applicants

INTELLECTUAL PROPERTY/
TECHNOLOGY LAW
Phone: (919) 419-9350
Fax: (919) 419-9354
Attorney File No.: 4276-101

The USPTO is hereby authorized to charge any deficiency or credit any overpayment of fees properly payable for this document to Deposit Account No. 08-3284